

REMARKS

Claims 2-24 and 26-28 are now pending in the application. By this Paper, the Abstract and Claims 2, 4-8, 12-14, 26, and 27 have been amended and Claim 1 has been cancelled without prejudice or disclaimer of the subject matter contained therein. The basis for the foregoing amendments can be found throughout the specification, claims, and drawings originally filed. No new matter has been added. The preceding amendments and the following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

SPECIFICATION

The Abstract of the disclosure stands objected to for exceeding one hundred fifty words in length. Applicants have amended the Abstract to reduce the number of words therein to less than one hundred fifty. Reconsideration and withdrawal of the objection are respectfully requested.

CLAIM OBJECTIONS

The claims stand objected to for having an improper sequence. Specifically, the Examiner asserts that Claims 8, 13, 14 and 19 are claims which depend from a dependent claim and are also separated from a claim that does not also depend from the dependent claim. Applicants note that Claims 4-8 and Claims 12-14 have been

renumbered such that no claim that depends from a dependent claim is separated from any claim that is not also dependent from that dependent claim.

Applicants respectfully submit that renumbering of Claim 19 is not necessary, as Claim 19 depends from Claim 15 and Claims 16-18 also depend from Claim 15, either directly or indirectly. Therefore, Applicants respectfully submit that the sequence of Claims 15-19 complies with MPEP §608.01(n).

REJECTION UNDER 35 U.S.C. § 112

Claims 5-7 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Applicants note that Claims 5 and 7 (which have been renumbered herein as Claims 6 and 8, respectively) have been amended to clarify and provide proper antecedent bases for various terms recited in Claims 5-7. Reconsideration and withdrawal of the rejection are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Muir et al. (U.S. Pat. No. 6,251,660). This rejection is rendered moot.

Claims 26-28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Minter et al. (International Pub. No. WO 02/16545). This rejection is respectfully traversed.

Applicants note that Claim 1 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Therefore, Applicants respectfully submit that the rejection of Claim 1 is moot.

Applicants note that independent Claims 26 and 27 have been amended to recite, in part, chamber portions that are slidable relative to each other, which Minter et al. fail to disclose or suggest. Minter et al. disclose a kit (101) including two vials (102, 103) and a connector (104). See Minter et al. at Page 9, Ins. 19-24. The vials (102, 103) screw into respective ends of the connector (104). See Minter et al. at Page 9, Ins. 22-24. Therefore, unlike Claims 26 and 27, Minter et al. does not disclose or suggest chamber portions that are slidable relative to each other.

In light of the foregoing, Applicants respectfully submit that independent Claims 26 and 27, as well as Claim 28, which is dependent upon Claim 27, are in condition for allowance. Reconsideration and withdrawal of the rejections are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 2-8 and 21-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Muir et al. in view of Minter et al.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Muir et al. in view of Minter et al. and further in view of Haber et al. (U.S. Pat. No. 5,188,615).

Claims 10 and 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Muir et al. in view of Minter et al. and further in view of Lacout (U.S. Pat. No. 6,543,645).

Claims 15-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Muir et al. in view of Minter et al. and further in view of Goodfield et al. (International Pub. No. WO 97/23596).

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Muir et al. in view of Minter et al. and further in view of Lacout and Haber et al.

These rejections are respectfully traversed.

Muir et al. disclose a device (not numbered) for screening a biological sample for the presence of a predetermined molecule. See Muir et al. at Col. 3, Ins. 58-60. Muir et al. disclose an exemplary embodiment of the device that includes a chamber (not numbered) having multiple compartments with barriers that can be ruptured. See Muir et al. at Col. 24, Ins. 63-67 and Figure 9. Fluid flows between adjacent compartments in response to “a series of plungers that consecutively pressurize individual compartments such that each ruptures and transfers its contents into the adjacent compartment.” See Muir et al. at Col. 25, Ins. 1-5 (emphasis added).

Unlike the device of Muir et al., Claim 2 recites, in part, simultaneously rupturing two or more partitions in response to relative movement of adjacent chamber portions towards each other. As stated above, Muir et al. teach consecutively rupturing adjacent compartments by relative movement between a plunger and the respective partition—not by relative movement of adjacent chamber portions towards each other, as claimed.

The Examiner alleges that the device of Minter et al. is capable of simultaneously rupturing a pair of partitions, and therefore, it would have been obvious to combine the teachings of Muir et al. and Minter et al. See the Office Action mailed October 7, 2010

at Page 7. However, the Examiner acknowledges that even if Minter et al. is capable of simultaneously rupturing a pair of partitions, which Applicants do not concede, such simultaneous rupturing "would require more coordination than the typical practitioner could muster." See the Office Action mailed October 7, 2010 at Page 7, Ins. 1 and 2. Because simultaneous rupturing would be nearly impossible for a practitioner to achieve, as the Examiner apparently admits, Applicants respectfully submit that one of ordinary skill in the art would not have modified Muir et al. to include the structure of Minter et al., as practitioners using the resultant device would be unable to operate the device in this manner. Accordingly, Applicants respectfully submit that the Examiner's proposed combination would render the device unfit for its intended purpose.

To support the legal conclusion of obviousness, the Examiner must explicitly articulate "an apparent reason to combine the known elements in the fashion claimed." See *KSR Int. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007). If a proposed modification would render the prior art unfit for its intended purpose, then there is no motivation to make the proposed combination. See MPEP §2143.01 and *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

In light of the foregoing, Applicants respectfully submit that independent Claim 2, as well as Claims 3-24, dependent therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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